

#### **AMENDMENTS TO THE DRAWINGS**

The attached sheet of drawings includes changes to Fig. 12. This sheet, which includes Fig. 11-12, replaces the original sheet 11 including Fig. 11-12. In Fig. 12, previously omitted element 20' has been added.

## REMARKS

### Drawings

Applicant has amended Figure 12 to add reference number 20', to indicate the "opening" of claim 27, already illustrated in the figure. The applicant respectfully submits that the claims no longer recite a "support structure".

### Election/Restriction

In compliance with the Office's requirement, claims 3, 5, 9-11, 15, 18, 22-23 are withdrawn from consideration. The applicant notes that the examiner did not identify these claims as not belonging to the elected class. The applicant respectfully disagrees with this designation, noting that these claims are dependant, either directly or indirectly from new claim 27.

### Claims Rejections - 35 USC §112

The Office rejected claims 1, 2, 4, 6-8, 12-14, 16, 17, 19-21, and 24-26 as failing to comply with 35 USC § 112. The applicant respectfully disagrees, but has amended the application to clarify

The phrase "support structure" is no longer a limitation in the claims. The applicant suggests that the amendments to the claims cure this rejection. The applicant further requests that this rejection be withdrawn.

The applicant notes that with regard to claims 12 and 25 that Markush groups are proper in mechanical inventions:

*Ex parte Markush* sanctions claiming a genus expressed as a group consisting of certain specified materials. Inventions in metallurgy, refractories, ceramics, pharmacy, pharmacology and biology are most frequently claimed under the Markush formula but purely mechanical features or process steps may also be claimed by using the Markush style of claiming. See *Ex parte Head*, 214 USPQ 551 (Bd. App. 1981); *In re Gaubert*, 524 F.2d 1222, 187 USPQ 664 (CCPA 1975); and *In re Hamisch*, 631 F.2d 716, 206 USPQ 300 (CCPA 1980). (Emphasis added) *MPEP* § 2173.05(h)

The Office cites *Ex parte Spafford* for the position that such a claim structure is improper, the cases cited in the MPEP are subsequent to *Spafford* and contradict that position. The applicant therefore respectfully submits that this is an improper rejection and respectfully requests that the Office withdraw its rejection of claims 12 and 25.

### **Claims Rejections - 35 USC §102(b)**

The Office rejected claims 1, 2, 6-8, 12-14, 16, 17, 19-21, and 24-26 under 35 U.S.C. 102(b) as being anticipated by Kiraly (US 3,347,184). A rejection based on anticipation requires that a single reference teach every element of the claim (MPEP § 2131). "The identical invention must be shown in as complete detail as is contained in the ... claim." *Richardson v. Suzuki Motor Co.*, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989). Or stated in another way, a "claim is anticipated only if each and every element as set forth in the claim is found, . . . described in a single prior art reference." *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987).

The Applicant respectfully disagrees with the Office's allegations regarding the '184 reference. The applicant, has however, amended the claims to further clarify the claimed subject matter. In contrast to the claimed invention, the '184 reference fails to disclose:

"a slider component disposed at a sloping angle beneath the plane of said first planar surface;"

At no time is the podium of the '184 reference disposed beneath the plane of the surrounding desk. The podium of the '184 is raised from a flat position to a deployed position on a hinged frame. It is prevented from dipping beneath the surface by the frame. Furthermore, no

sliding component is disclosed, as the '184 reference's supports are all hinged rather than gliding or sliding. While the Office might allege that position link 45 may be a "sliding component" the applicant respectfully submits that this is incorrect given the context for such a sliding component in the applicant's specification. The applicant further suggests that even assuming that the Office is correct in its allegations, the position link 45 is not,

"being configured to receive said panel beneath said first planar surface and laterally displaced from said opening."

This absence is clear as the position link 45 does not receive the panel, and especially does not receive the panel beneath said first planar surface or receive it laterally displaced from the opening.

Similarly, the '184 reference fails to disclose the disposal of the sliding component or the stowed panel "beneath said first planar surface and laterally displaced from said opening" as recited by claim 26 as amended. Therefore, the applicant respectfully submits that claim 26 is patentably distinct from the '184 reference.

As claims 2, 6-8, 12-14, 16-17, 19-21 and 24 depend either directly or indirectly from claim 27, the applicant respectfully submits that they are likewise not unpatentable in light of the '184 reference. The applicant therefore respectfully request that the Office withdraw its rejection of the claims 2, 6-8, 12-14, 16-17, 19-21, 24 and 26.

### **Claim Rejections – 35 USC § 103**

The Office has quoted the statute from 35 USC 103(a), which is referenced herein. The Office has rejected claim 4 as being unpatentable over the '184 reference. Applicant has carefully considered the Office rejections and respectfully submits that the amended claims, as supported by the arguments herein, are distinguishable from the cited reference.

According to the MPEP §2143.01, "[o]bviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some

teaching, suggestion, or motivation to do so found in either the references themselves or in the knowledge generally available to one of ordinary skill in the art."

A useful presentation for the proper standard for determining obviousness under 35 USC §103(a) can be illustrated as follows:

1. Determining the scope and contents of the prior art;
2. Ascertaining the differences between the prior art and the claims at issue;
3. Resolving the level of ordinary skill in the pertinent art; and
4. Considering objective evidence present in the application indicating obviousness or unobviousness.

The applicant respectfully submits that as claim 4 is dependant from claim 27, and at least for those reasons set forth above, claim 27 is patentably distinct from the '184 reference. The applicant therefore suggests that claim 4 is likewise patentably distinct from the '184 reference. The applicant therefore requests that the Office withdraw its rejection of claim 4.

### **Double Patenting**

#### ***Terminal Disclaimer for Non-Statutory Double Patenting***

The Office issued a Double Patenting rejection, and Applicant agrees to herein file a terminal disclaimer to advance processing and obviate the rejection based on non-statutory double patenting. The filing of the terminal disclaimer is **not** an admission of the propriety or merits of the rejection. The issued patent and the above-referenced application share common ownership. Review and allowance is respectfully requested.

The Office rejected claims 1, 2, 4, 6-8, 12-14, 16-17, 19-21 and 24-26 under the judicially created doctrine of obviousness-type double patenting over U.S. Patent No. 6,446,564. Applicant agrees to a terminal disclaimer only to advance processing of the present application and states herein that the cited issued U.S. Patent 6,446,564. *See* Quad Environmental Technologies Corp. v. Union Sanitary District, 946 F.2d 870, 20 USPQ2d 1392 (Fed. Cir. 1991). The court indicated that the "filing of a terminal disclaimer simply serves the statutory function

of removing the rejection of double patenting, and raises neither a presumption nor estoppel on the merits of the rejection."

Applicant believes the above amendments and remarks to be fully responsive to the Office Action, thereby placing this application in condition for allowance. No new matter is added. Applicant requests speedy reconsideration, and further requests that Examiner contact its attorney by telephone, facsimile, or email for quickest resolution, if there are any remaining issues.

Respectfully submitted,

**/Andrew P. Cernota, Reg. No. 52,711/**

Cus. No. 24222  
Maine & Asmus  
PO Box 3445  
Nashua, NH 03061-3445  
Tel. No. (603) 886-6100, Fax. No. (603) 886-4796  
Patents@maineandasmus.com

Vernon C. Maine, Reg. No. 37,389  
Scott J. Asmus, Reg. No. 42,269  
Andrew P. Cernota, Reg. No. 52,711  
Kristina M. Grasso, Reg. No. 39,205  
Attorneys/Agents for Applicant